

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ERIC WINSTON

PLAINTIFF

vs.

NO. 5:08CV00230 BSM

MARSHAL GONDA, ET AL.

DEFENDANT

ORDER

On August 27, 2008, the court entered an order directing plaintiff to file a statement setting forth all the facts in support of his position that his claims are timely filed. Plaintiff has responded.

Plaintiff states that this action is a timely refiling of 5:08CV00174. In that case, plaintiff filed a complaint on June 17, 2008 in which he raised claims arising from three separate incidents occurring on June 27, 2005, July 14, 2005, and November 17, 2005. Magistrate Judge H. David Young, recommended that the case be dismissed without prejudice so that plaintiff could bring his claims in separate actions. Plaintiff was directed to refile separate complaints for each incident.

The court adopted the proposed findings and recommendations of Judge Young. In response to plaintiff's objections, the court noted that the Arkansas saving statute would allow plaintiff to commence a new action within one year after the dismissal of the complaint without prejudice. Plaintiff commenced this action within ten days of the dismissal. The cause of action, which arose on June 27, 2005, was timely filed in 5:08CV174 and the statute of limitations is tolled by the saving statute. Plaintiff's action is therefore timely.

In light of plaintiff's response, the case is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED this 28th day of October, 2008.


UNITED STATES DISTRICT JUDGE